

HIE Task Force – Legal/Policy Workgroup

Table of Issues

Issue	Recommended Resolution	Interested Parties	Process for Resolution	Public Policy Considerations
				In general: <ul style="list-style-type: none"> • Patient privacy • Public health • Quality improvement • Compliance • Liability
Governance	<ul style="list-style-type: none"> • Need state enabling legislation • Need state appropriation with funding 			
Patient Consent <ul style="list-style-type: none"> • Opt-in/Opt-Out • ID situations when patient consent not required – ER, public health reporting, law enforcement • Accounting of Disclosure of electronic information (also see patient/provider notice below) 	<ul style="list-style-type: none"> • Need state legislation 			
Patient access to information				
Ownership of Information <ul style="list-style-type: none"> • Provider entry • All info re one patient • Compilations of info across patient files 	<ul style="list-style-type: none"> • Need state legislation 			
Original record may now be				

the electronic file – no paper copy or printout. What are the implications?				
Court Processes <ul style="list-style-type: none"> Rules of Discovery Rules of Evidence 		AR Supreme Court Ark Bar Association Trial Lawyers Association Tort Reform Advocates	Changes in Rules of Evidence and other court procedures are addressed through the AR Supreme Court	
Subpoenas <ul style="list-style-type: none"> Court issued Agency issued Legislature issued 				
Use of Data <ul style="list-style-type: none"> Define the contents of the HIE Will it include results of tests administered by non-health entities, such as law enforcement, schools or employers Define scope or levels of availability Determine who has access to what Distinction between viewable information and downloadable information Implement higher protections for info re abuse reporting, drug, HIV, psych issues To identify pre-existing conditions To deny claims To deny coverage To make employment decisions 	<ul style="list-style-type: none"> Need state legislation (should probably be part of enabling legislation) 			

<ul style="list-style-type: none"> • To make law enforcement decisions • To support regulatory actions • To identify cost centers for business development 				
<p>Corrections to Information</p> <ul style="list-style-type: none"> • Define process for correcting information • What warrants correction? • Who decides if correction is appropriate? • What if there's disagreement about correction? • Who makes correction? • When is correction made? Should there be time frames? • Is there a responsibility to correct? If so, who has it? • Who is liable for damage if treatment is rendered based on incorrect information? 	<ul style="list-style-type: none"> • Need state legislation (should probably be part of enabling legislation) 			
<p>Notice to patient</p> <ul style="list-style-type: none"> • When information accessed • When information that identifies patient is accessed • When de-identified information is 	<ul style="list-style-type: none"> • Need state legislation (should probably be part of enabling legislation) 			

accessed <ul style="list-style-type: none"> • What if abuse reporting is involved • What if fraud is alleged 				
Notice to provider				
Interface with Medicaid <ul style="list-style-type: none"> • MMIS capabilities • Electronic signatures 				
Contract Issues <ul style="list-style-type: none"> • State Vendor Agreement • Business Associate Agreements • Data Use Agreements 	<ul style="list-style-type: none"> • Need to engage experienced IT contract lawyers 			
Consequences of unauthorized access to system Consequences of down-line release information from system – legal access, then inappropriate release of results obtained	<ul style="list-style-type: none"> • Need state laws to establish civil and criminal penalties 			
Liability				
Immunity				